IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1608 OF 1999

Dhananjay Vasudeo Gokhale, adult, Occupation : Service, residing at Opp. Fort, Dahanu, Taluka Dahanu, District Thane - 401 601. ... Petitioner

Versus

1. The Learned District and Sessions Judge, Thane.
2. The High Court of Judicature at Bombay through the Registrar, High Court, Appellate Side, Mumbai.
3. The State of Maharashtra [Through the Secretary, Department of Law and Judiciary, Mantralaya, Mumbai – 400 032.]
4. Shri A.T. Jagzap, adult, Occupation : Service, at present employed as the Superintendent, District Court, Thane.
5. Smt. S.S. Chandane, adult, Occupation : Service, at present working as Superintendent in the District Court, Thane.
6. P.N. Awate, adult, Occupation : Service, at present working as Superintendent, Civil Court (S.D.) Palghar, District Thane.
7. Shri B.B. Bagal, adult, Occupation : Service, at present working as Superintendent in the District Court at Thane. ... Respondents

Mr. N.R. Bubna for the petitioner.

Ms. P.S. Cardozo, A.G.P. for respondents 1 to 3.

Mr. R.B. Paranjape for respondents 4, 5 and 7.

CORAM : SMT. RANJANA DESAI &
SMT. V.K. TAHILRAMANI, JJ.

DATED : 25TH AUGUST, 2006.

ORAL JUDGMENT :- (Per Smt. Ranjana Desai, J.)

1. In this writ petition, the petitioner has challenged order dated 23/2/1998 passed by respondent 1 - the District and Sessions Judge, Thane, order dated 30/11/1998 passed by respondent 2 and communication letter dated 4/12/1998.

2. It appears that in view of the retirement of Mr. P.G. Walve, Superintendent, M.A.C.T., Thane, on superannuation on 28/2/1998, a vacancy had occurred in the cadre of the Superintendent. It is the petitioner's case that as per the seniority of the candidates from the cadre of the Assistant Superintendent as per Gradation list, he was due for promotion to this cadre. However, the service record of the petitioner was scrutinized to assess the petitioner's eligibility for promotion to the cadre of Superintendent and taking into consideration the said record, respondent 1 came to a conclusion that the petitioner is not a fit candidate for promotion to the cadre of Superintendent. He, therefore, passed order dated 23/2/1998 to the effect that the petitioner,

who was at that time Assistant Superintendent, Joint Civil Court, J.D. & J.M.F.C., Palghar, was found not fit for promotion to the cadre of Superintendent. He was thus superseded for a period of three years.

3. It appears that the petitioner made a representation against the said order and the said representation was rejected. The petitioner then preferred an administrative appeal dated 4/8/1998. The said appeal was rejected by the 2nd respondent - the appellate authority on 30/11/1998. A communication dated 4/12/1998 was sent by the Registrar of the District Court, Thane to the Joint Civil Judge, Junior Division, Palghar informing him that respondent 2 had vide confidential letter dated 2/12/1998 informed that the appeal filed by the petitioner challenging the order dated 23/2/1998 was rejected by respondent 2. Being aggrieved by this order, the petitioner has filed this writ petition.

4. We have heard Mr. Bubna, the learned counsel appearing for the petitioner. He contended that the impugned orders deserve to be set aside as the petitioner was not given a personal hearing and, therefore, there is breach of principles of natural justice.

5. We find substance in the submission of the learned counsel. In ***Anil Amrut Atre v. District & Sessions Judge, Aurangabad & Anr., 2002(3) Mh.L.J. 750***, the Full Bench of this court was considering, inter alia, Rule 23

(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. After considering the relevant judgments on the point, the Full Bench, inter alia, held that the expression “consider” found in Rule 23(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would include within its sweep application of mind, personal hearing and recording of reasons and, therefore, it is obligatory on the appellate authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent. Since, admittedly, the petitioner was not given a personal hearing, the impugned order will have to be set aside. Hence, the following order :

O R D E R

6. The impugned order dated 30/11/1998 passed by the appellate authority is set aside. The appellate authority shall reconsider the matter after giving a personal hearing to the petitioner and pass appropriate speaking order. Order accordingly.

7. Writ petition is disposed of in the aforestated terms.

[SMT. RANJANA DESAI, J.]

[SMT. V.K. TAHILRAMANI, J.]